

QUINN EMANUEL URQUHART & SULLIVAN, LLP
Kevin Y. Teruya (Bar No. 235916)
kevinteruya@quinnemanuel.com
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017-2543
(213) 443-3000

HAGENS BERMAN SOBOL SHAPIRO LLP
Shana E. Scarlett (Bar No. 217895)
shanas@hbsslaw.com
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
(510) 725-3000

Interim Co-Lead Consumer Class Counsel

BATHAE DUNNE LLP
Yavar Bathaee (Bar No. 282388)
yavar@bathaeedunne.com
445 Park Avenue, 9th Floor
New York, NY 10022
(332) 322-8835

SCOTT+SCOTT ATTORNEYS AT LAW LLP
Amanda F. Lawrence (*pro hac vice*)
alawrence@scott-scott.com
156 South Main Street, P.O. Box 192
Colchester, CT 06415
(860) 537-5537

Interim Co-Lead Advertiser Class Counsel

[Additional counsel listed on signature page]

**WILMER CUTLER PICKERING
HALE AND DORR LLP**
SONAL N. MEHTA (SBN 222086)
Sonal.Mehta@wilmerhale.com
2600 El Camino Real, Suite 400
Palo Alto, California 94306
Telephone: (650) 858-6000

DAVID Z. GRINGER (*pro hac vice*)
David.Gringer@wilmerhale.com
7 World Trade Center
250 Greenwich Street
New York, New York 10007
Telephone: (212) 230-8800

ARI HOLTZBLATT (*pro hac vice*)
Ari.Holtzblatt@wilmerhale.com
MOLLY M. JENNINGS (*pro hac vice*)
Molly.Jennings@wilmerhale.com
2100 Pennsylvania Ave NW
Washington, DC 20037
Telephone: (202) 663-6000

*Attorneys for Defendant Meta Platforms,
Inc.*

[Additional counsel listed on signature
page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MAXIMILIAN KLEIN, et al.,

Plaintiffs,

vs.

META PLATFORMS, INC.,

Defendant.

This Document Relates To: All Actions

Consolidated Case No. 3:20-cv-08570-JD

**THIRTEENTH JOINT CASE
MANAGEMENT STATEMENT**

The Hon. James Donato

Hearing Date: April 18, 2024 at 10:00 a.m.

THIRTEENTH JOINT CASE MANAGEMENT STATEMENT

In advance of the April 18, 2024 Status Conference, counsel for Consumer Plaintiffs (“Consumers” or “Users”), Advertiser Plaintiffs (“Advertisers”), and defendant Meta Platforms, Inc. (“Meta” or “Facebook”) respectfully submit this Thirteenth Joint Case Management Statement. This statement summarizes for the Court open items that the parties either jointly or individually contend are ripe for the Court’s consideration or soon will be.

I. Pending Motions That Are Fully Briefed

A. Motions for Class Certification

On September 15, 2023, both Advertiser Plaintiffs and User Plaintiffs filed motions for class certification. Dkts. 643, 648. Meta opposed both motions, Dkts. 670, 672, and both groups of plaintiffs filed reply briefs, Dkts. 698, 700.

These motions have been fully briefed since November 3, 2023.

B. Class Certification *Daubert* Motions

At the class certification stage, the parties moved to exclude certain proposed expert testimony from a subset of the experts who submitted reports:

- **Advertiser Plaintiffs** moved to exclude testimony from Meta’s class certification-stage experts Yael Hochberg, Dkts. 658, 678, 691; and Catherine Tucker. Dkts. 660, 676, 682.
- **Meta** moved to exclude testimony from Advertiser Plaintiffs’ class certification-stage experts Scott Fasser and Joshua Gans, Dkts. 644, 666, 668, 684; and Michael Williams and Kevin Kreitzman. Dkts. 662, 680, 686.
- **User Plaintiffs** moved to exclude testimony from Meta’s class certification-stage expert Catherine Tucker. Dkts. 649, 664, 697.
- **Meta** moved to exclude testimony from User Plaintiffs’ class certification-stage expert Nicholas Economides. Dkts. 650, 674, 695.

These motions have been fully briefed since November 3, 2023.

II. Pending Motions With Ongoing Briefing

A. Dispositive Motions

On April 5, 2024, Meta moved for summary judgment on the claims raised by both the Advertiser Plaintiffs and User Plaintiffs. Dkts. 755, 767.

Oppositions are due on May 3, 2024, and reply briefs are due on May 21, 2024. Dkt. 379.

B. Merits *Daubert* Motions

At the merits stage, the parties moved to exclude certain proposed expert testimony from a subset of the experts who submitted reports:

- **Advertiser Plaintiffs** moved to exclude testimony from Meta’s merits-stage experts Georgios Zervas, Dkt. 753; and Catherine Tucker, Dkt. 763.
- **Meta** moved to exclude testimony from Advertiser Plaintiffs’ merits-stage experts Michael Williams, Dkt. 757; Kevin Kreitzman, Dkt. 759; Tilman Klumpp, Dkt. 761; and Markus Jakobsson, Dkt. 775.
- **User Plaintiffs** moved to exclude testimony from Meta’s merits-stage experts Catherine Tucker, Dkt. 765; Anindya Ghose, Dkt. 778; John List, Dkt. 779; and Dennis Carlton, Dkt. 780.
- **Meta** moved to exclude testimony from User Plaintiffs’ merits-stage experts Nicholas Economides, Dkt. 770; Joseph Farrell, Dkt. 773; Sarah Lamdan, Dkt. 777.

Oppositions are due on May 3, 2024, and reply briefs are due on May 21, 2024. Dkt. 379.

III. Schedule For Further Proceedings

This Court’s operative Scheduling Order, entered on November 18, 2022, scheduled a class certification concurrent expert proceeding for December 5, 2023; a class certification hearing for December 14, 2023; a merits concurrent expert proceeding for June 11, 2024; a dispositive and merits *Daubert* motions hearing for June 20, 2024; a pretrial conference for October 17, 2024; and a jury trial for November 12, 2024. Dkt. 379.

On November 10, 2023, the parties filed their joint submission for the class certification concurrent expert proceeding. Dkt. 704. On November 17, 2023, this Court rescheduled the class certification concurrent expert proceeding to March 12, 2024 and vacated the hearing on class

1 certification and related *Daubert* motions pending further order of the Court. Dkt. 708. On March
 2 5, 2024, this Court rescheduled the class certification concurrent expert proceeding to August 22,
 3 2024. Dkt. 730. The class certification hearing has not been rescheduled.

4 Thus, the current schedule for remaining proceedings is as follows:

- 5 • May 3, 2024: Oppositions to dispositive and merits *Daubert* motions due
- 6 • May 21, 2024: Reply briefs on dispositive and merits *Daubert* motions due
- 7 • May 28, 2024: Joint submission for merits concurrent expert proceeding due
- 8 • June 11, 2024, 11:00 a.m.: Merits concurrent expert proceeding
- 9 • June 20, 2024, 10:00 a.m.: Dispositive and merits *Daubert* motions hearing
- 10 • August 22, 2024, 1:30 p.m.: Class certification concurrent expert proceeding
- 11 • October 17, 2024, 1:30 p.m.: Pretrial conference
- 12 • November 12, 2024, 9:00 a.m.: Jury trial

13 **Meta's Statement Concerning the Schedule for Further Proceedings:** Meta respectfully
 14 requests an opportunity to discuss with the Court the schedule for remaining proceedings at the
 15 upcoming status conference in light of the following considerations.

16 After the recent schedule changes, two of Meta's experts have scheduling conflicts on the
 17 current dates for the merits concurrent expert proceeding and the class certification concurrent
 18 expert proceeding. Meta's expert Dr. John List, who offers opinions at the merits stage in relation
 19 to the User case, is unavailable on June 11, 2024, the date of the merits concurrent expert proceeding.
 20 Dr. List operates an annual summer program for high school students from underrepresented
 21 backgrounds with an interest in economics. The program is scheduled from June 9-11, and Dr. List's
 22 attendance is required on June 11. Meta's expert Dr. Catherine Tucker, who offers opinions at the
 23 class certification stage in relation to both the User and Advertiser cases, is unavailable on August
 24 22, 2024, the new date of the class certification concurrent expert proceeding. Dr. Tucker will be
 25 out of the country on August 22 on travel that has been scheduled since before the August 22 date
 26 was set.

27 Meta also requests an opportunity to discuss the structure and timing of the concurrent expert
 28 proceedings for the Advertiser and User cases. As the Court knows, there are two consolidated, but

1 distinct and now substantially non-overlapping, cases—one brought by the Advertiser Plaintiffs, *see*
2 Dkt. 237 (Amended Advertiser Compl.), and one brought by the User Plaintiffs, *see* Dkt. 87 (User
3 Compl.). Each case involves different proposed classes of plaintiffs, different alleged relevant
4 markets, different challenged conduct, and different damages theories and demands. As indicated in
5 the parties' joint stipulation concerning the class certification concurrent expert proceeding, the
6 Advertiser Plaintiffs intend to bring four experts to the class certification expert proceeding, and the
7 User Plaintiffs intend to bring an additional four experts to the same proceeding. Dkt. 687.¹ Meta
8 has three experts offering opinions at the class certification stage: one addressing issues in the
9 Advertiser case (Dr. Yael Hochberg), one addressing issues in the User case (Rebecca Kirk Fair),
10 and one separately addressing issues in both cases (Dr. Catherine Tucker). *Id.* Given the number of
11 experts involved, Meta respectfully submits that it might be more administrable and helpful to the
12 Court if the parties' experts addressed issues in the Advertiser case at class certification and merits
13 concurrent expert proceedings that took place separately from the class certification and merits
14 concurrent expert proceedings concerning the User case. As presently structured, the class
15 certification concurrent expert proceeding on August 22, 2024 will involve testimony from 11 expert
16 witnesses on two distinct and largely unrelated sets of topics, *see* Dkts. 704-1 (User-Meta topics),
17 704-2 (Advertiser-Meta topics), concerning two cases that the parties agree should be tried
18 separately, *see infra*, which may be an unusually lengthy amount of material to cover in a single
19 day.

20 Now that fact and expert discovery are closed, class certification briefing is complete, and
21 summary judgment and merits *Daubert* briefing are soon to be complete, Meta also submits that it
22 may be time for the parties and the Court to discuss what trial structure and order make sense in the
23 event that either or both cases survive summary judgment and class certification and proceed to trial.
24 The Court's guidance on which case will proceed to trial first may also inform the ordering of the
25 concurrent expert proceedings under Meta's proposal.

26
27 ¹ Meta continues to request that the Court deny permission for one of User Plaintiffs' putative class
28 certification-stage experts, Joseph Farrell, to participate in the class certification concurrent expert
proceeding given his testimony confirming the extremely limited scope and irrelevance of his class
certification-stage opinions, as explained in Meta's November 17, 2023 letter. Dkt. 709.

Meta previously reached out to counsel for the User Plaintiffs to discuss certain of these scheduling issues and the parties will continue to confer before next week's status conference regarding these and other scheduling issues.

Plaintiffs' Statement Concerning the Schedule for Further Proceedings:

Timing and structure of concurrent expert proceedings: The parties jointly proposed separate class certification concurrent expert proceedings—one for the Consumer case, and one for the Advertiser case—to proceed on the same day.² To the extent that Meta is suggesting above that class certification and merits concurrent expert proceedings occur on separate days as between the Consumer and Advertiser cases—*i.e.*, the Consumer-Meta class certification expert concurrent proceeding occur on one day, the Advertiser-Meta class certification expert concurrent proceeding occur on another day, and the like for merits expert concurrent proceedings—Plaintiffs believe that one day would be sufficient for these proceedings. In other words, the Consumer-Facebook and Advertiser-Facebook class certification expert concurrent proceedings should occur on a single day, and the Consumer-Facebook and Advertiser-Facebook merits expert concurrent proceedings should occur on a single day. Each of Plaintiffs' experts are busy professionals with commitments (academic and otherwise). Introducing additional days of testimony at this late stage would pose challenges to their schedules. But Plaintiffs will accommodate whatever works for the Court's schedules to the best of their abilities.

Order of Trials: Plaintiffs believe it is premature to discuss which of the plaintiff classes will proceed first at trial. However, both Plaintiff classes agree with Meta that the Advertisers and Consumers trials should proceed separately, not jointly.

Meta's requested exclusion of Dr. Farrell from the class certification round table: Consumer Plaintiffs disagree with Facebook's continued request to exclude one of their experts, Dr. Farrell, from the class certification concurrent proceeding. Facebook mischaracterizes Dr. Farrell's class certification opinions; rather than rely on Facebook's characterization, Dr. Farrell should be permitted to describe his opinions to the Court for himself at the class certification expert

² Dkt. No. 704.

1 proceeding. Further, his class certification opinions are helpful to resolving whether market
2 definition is a common, class-wide issue. Regardless, Facebook's purported concerns underlying its
3 request to exclude Dr. Farrell from the class certification concurrent proceeding are moot because
4 they are addressed by his merits reports and opinions.

5 **IV. Settlement and ADR**

6 The parties' ADR efforts to date have included a mediation that was scheduled for October
7 4-5, 2023 with Gregory Lindstrom. The parties mediated this case for one day but were unable to
8 reach an agreement.

9 **V. Update Regarding Related Lawsuits**

10 In *Federal Trade Commission v. Meta Platforms, Inc.*, No. 1:20-cv-03590-JEB (D.D.C.),
11 fact and expert discovery are closed. Meta moved for summary judgment on April 5, 2024. Dkt.
12 324. Briefing on dispositive motions in that action will be complete on August 9, 2024. No trial date
13 has yet been set.

1 DATED: April 11, 2024

Respectfully submitted,

2 By: /s/ Shana E. Scarlett

3 **HAGENS BERMAN SOBOL SHAPIRO LLP**

4 Shana E. Scarlett (Bar No. 217895)

5 shanas@hbsslaw.com

6 715 Hearst Avenue, Suite 202

7 Berkeley, CA 94710

8 Telephone: (510) 725-3000

9 Steve W. Berman (*pro hac vice*)

10 steve@hbsslaw.com

11 1301 Second Avenue, Suite 2000

12 Seattle, WA 98101

13 Telephone: (206) 623-7292

14 **LOCKRIDGE GRINDAL NAUEN P.L.L.P.**

15 W. Joseph Bruckner (*pro hac vice*)

16 wjbruckner@locklaw.com

17 Robert K. Shelquist (*pro hac vice*)

18 rkshelquist@locklaw.com

19 Brian D. Clark (*pro hac vice*)

20 bdclark@locklaw.com

21 Rebecca A. Peterson (Bar No. 241858)

22 rapeterson@locklaw.com

23 Arielle S. Wagner (*pro hac vice*)

24 aswagner@locklaw.com

25 Kyle J. Pozan (admitted *pro hac vice*)

26 kjpozan@locklaw.com

27 Laura M. Matson (admitted *pro hac vice*)

28 lmmatson@locklaw.com

100 Washington Avenue South, Suite 2200

Minneapolis, MN 55401

Telephone: (612) 339-6900

By: /s/ Kevin Y. Teruya

**QUINN EMANUEL URQUHART & SULLIVAN,
LLP**

Kevin Y. Teruya (Bar No. 235916)

kevinteruya@quinnemanuel.com

Adam B. Wolfson (Bar No. 262125)

adamwolfson@quinnemanuel.com

Claire D. Hausman (Bar No. 282091)

clairehausman@quinnemanuel.com

Brantley I. Pepperman (Bar No. 322057)

brantleypepperman@quinnemanuel.com

865 South Figueroa Street, 10th Floor

Los Angeles, CA 90017-2543

(213) 443-3000

Michelle Schmit

michelleschmit@quinnemanuel.com

191 N. Wacker Drive, Suite 2700

Chicago, IL 60606

Telephone: (312) 705-7400

Manisha M. Sheth (admitted *pro hac vice*)

manishasheth@quinnemanuel.com

51 Madison Avenue, 22nd Floor

New York, New York 10010

(212) 849-7000

Interim Counsel for the Consumer Class

1 By: /s/ Yavar Bathaee
2 **BATHAEE DUNNE LLP**
3 Yavar Bathaee (Bar No. 282388)
4 yavar@bathaeedunne.com
5 Andrew C. Wolinsky (*pro hac vice*)
6 awolinsky@bathaeedunne.com
7 445 Park Avenue, 9th Floor
8 New York, NY 10022
9 Telephone: (332) 322-8835

6 Brian J. Dunne (Bar No. 275689)
7 bdunne@bathaeedunne.com
8 Edward M. Grauman (*pro hac vice*)
9 egrauman@bathaeedunne.com
10 901 South MoPac Expressway
11 Barton Oaks Plaza I, Suite 300
12 Austin, TX 78746
13 Telephone: (512) 575-8848

14 **AHDOOT & WOLFSON, PC**
15 Tina Wolfson (Bar No. 174806)
16 twolfson@ahdootwolfson.com
17 Robert Ahdoot (Bar No. 172098)
18 rahdoot@ahdootwolfson.com
19 Theodore W. Maya (Bar No. 223242)
20 tmaya@ahdootwolfson.com
21 Henry Kelston (*pro hac vice*)
22 hkelston@ahdootwolfson.com
23 2600 West Olive Avenue, Suite 500
24 Burbank, CA 91505
25 Telephone: (310) 474-9111
26
27
28

By: /s/ Amanda F. Lawrence
SCOTT+SCOTT ATTORNEYS AT LAW LLP
Amanda F. Lawrence (*pro hac vice*)
alawrence@scott-scott.com
Patrick J. McGahan (*pro hac vice*)
pmcgahan@scott-scott.com
Michael P. Srodoski (*pro hac vice*)
msrodoski@scott-scott.com
156 South Main Street, P.O. Box 192
Colchester, CT 06415
Telephone: (860) 537-5537

Hal D. Cunningham (Bar No. 243048)
hcunningham@scott-scott.com
Daniel J. Brockwell (Bar No. 335983)
dbrockwell@scott-scott.com
600 W. Broadway, Suite 3300
San Diego, CA 92101
Telephone: (619) 233-4565

Patrick J. Rodriguez (*pro hac vice*)
prodriguez@scott-scott.com
230 Park Avenue, 17th Floor
New York, NY 10169
Telephone: (212) 223-6444

LEVIN SEDRAN & BERMAN LLP
Keith J. Verrier (*pro hac vice*)
kverrier@lfsblaw.com
Austin B. Cohen (*pro hac vice*)
acohen@lfsblaw.com
510 Walnut Street, Suite 500
Philadelphia, PA 19106
Telephone: (215) 592-1500

Interim Counsel for the Advertiser Class

By: /s/ Sonal N. Mehta

SONAL N. MEHTA (SBN 222086)
Sonal.Mehta@wilmerhale.com
WILMER CUTLER PICKERING HALE
AND DORR LLP
2600 El Camino Real, Suite 400
Palo Alto, California 94306
Telephone: (650) 858-6000

DAVID Z. GRINGER (*pro hac vice*)
David.Gringer@wilmerhale.com
ROSS E. FIRSENBAUM (*pro hac vice*)
Ross.Firsenbaum@wilmerhale.com
RYAN CHABOT (*pro hac vice*)
Ryan.Chabot@wilmerhale.com
PAUL VANDERSLICE (*pro hac vice*)
Paul.Vanderslice@wilmerhale.com
WILMER CUTLER PICKERING HALE
AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, New York 10007
Telephone: (212) 230-8800

ARI HOLTZBLATT (*pro hac vice*)
Ari.Holtzblatt@wilmerhale.com
MOLLY M. JENNINGS (*pro hac vice*)
Molly.Jennings@wilmerhale.com
WILMER CUTLER PICKERING HALE
AND DORR LLP
2100 Pennsylvania Avenue NW
Washington, DC 20037
Telephone: (202) 663-6000

MICHAELA P. SEWALL (*pro hac vice*)
Michaela.Sewall@wilmerhale.com
WILMER CUTLER PICKERING HALE
AND DORR LLP
60 State Street
Boston, Massachusetts 02109
Telephone: (617) 526-6000

Attorneys for Defendant Meta Platforms, Inc.

ATTESTATION OF SHANA SCARLETT

This document is being filed through the Electronic Case Filing (ECF) system by attorney Shana Scarlett. By her signature, Ms. Scarlett attests that she has obtained concurrence in the filing of this document from each of the attorneys identified on the caption page and in the above signature block.

Dated: April 11, 2024

By /s/ Shana Scarlett

Shana Scarlett

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of April, 2024, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System, causing the document to be electronically served on all attorneys of record.

By /s/ Shana Scarlett

Shana Scarlett